

January 8, 2018

Mr. Devin Leary
Human & Rohde Inc.
512 Virginia Ave.
Towson MD 21286

Re: Totaro, Frances P. Property
2021 Rocky Point Road 21221
Critical Area Administrative Variance
Tracking No. 07-17-2591

Dear Mr. Leary:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request related to the minor subdivision of the above referenced property. The property is located within a Limited Development Area and a Resource Conservation Area in the Chesapeake Bay Critical Area. The four existing homes on proposed lot 3 are also located within a Modified Buffer Area. The request proposes to impact 11,300 square feet of the Critical Area buffer for the continued use of four separate yard areas as part of a subdivision around existing dwellings. No construction or new buffer disturbances are proposed. In addition, there are no proposed direct impacts to streams, non-tidal wetlands, tidal wetlands, tidal waters, or forest. The required buffer covers the majority of the property. Planting of the buffer is proposed to meet all buffer mitigation, buffer establishment, and forest requirements on the property.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in an unwarranted hardship. The residential uses (five houses) on this property existed prior to the Critical Area law, and no construction or new buffer disturbances are proposed. The minor subdivision has been proposed to separate the home and associated land at 2021 Rocky Point Road from the four other homes. While this variance request proposes continued existing uses of four separate yard areas, these proposed continued uses have been minimized and the remaining buffer must be planted to meet mitigation and forest requirements. Literal enforcement of the regulations would not allow for any continued existing use of some of the yard areas that have been used since a time prior to the Critical Area law on this grandfathered property. Based on this, special conditions do exist that are peculiar to this site, and literal enforcement of the

Mr. Devin Leary
Totaro, Frances P. Property
2021 Rocky Point Road 21221
Critical Area Administrative Variance
Tracking No. 07-17-2591
January 8, 2018
Page 2

regulations would result in an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Residential property owners in the Critical Area with similar site constraints and historic uses enjoy continued uses on their properties like the uses proposed in this application. Literal enforcement of the regulations would deprive the owners of the subject property from continued existing use of part of the yard areas utilized prior to the Critical Area law. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Continued existing use of some yard areas in the Critical Area buffer on the referenced property would not be denied to similar properties with similar constraints in the Critical Area. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This request for a variance is not the result of existing or proposed uses on any of the neighboring properties, and the owners have not begun any work on-site that would require this variance request. Five homes have historically existed on the subject property, and this request is a result of the owner wanting to separate one home and associated land area from the other homes. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. There is no construction or new buffer impact associated with this request as the subdivision is proposed to create a new lot for one of the existing homes. The impacts to the buffer have been minimized as continued existing use has been limited to four areas of a large existing lawn area. The remaining buffer will be planted with native trees and shrubs to meet buffer mitigation and forest requirements. A Critical Area Easement will be recorded in Baltimore County Land Records with a declaration of protective covenants, conditions, and restrictions. Therefore, the buffer impacts to allow for continued existing use of four yard areas will result in minimal adverse impacts to plants or wildlife. Granting of this variance will be in harmony with the spirit and intent of the Critical Area regulations, and the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by meeting mitigation

Mr. Devin Leary
Totaro, Frances P. Property
2021 Rocky Point Road 21221
Critical Area Administrative Variance
Tracking No. 07-17-2591
January 8, 2018
Page 3

requirements. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

"On January 8, 2018, a variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection to allow for impact to the Critical Area buffer for continued use of four separate yard areas. Conditions, including the afforestation of the entire remaining buffer, were placed on this variance to reduce water quality impacts. Any revisions to this proposal, or any new development involving buffer impacts will require a new variance application for review".

2. Mitigation for approved impacts shall be provided as follows:

The 11,300 square feet of Critical Area buffer impacts shall be mitigated at a rate of 3:1 resulting in a 33,900 square foot buffer mitigation requirement. The remaining buffer area (15,269 square feet) must be planted so that the property can comply with the 15% minimum forest requirement (See condition #3 below).

3. The required mitigation for buffer impacts and additional planting to meet forest requirements must be detailed in the Critical Area management/buffer management plan (CAMP) for this project. This plan must be approved prior to minor subdivision approval.
4. Upon approval of the CAMP by this Department, a security of no less than \$0.25 per square foot of any planting areas shall be submitted to Baltimore County with an Environmental Agreement. Securities must be submitted prior to minor subdivision approval. Mitigation shall be completed prior to May 25, 2018. Plantings must meet a 100% survivability requirement for two years following the approval of the initial planting by this office.
5. Critical Area "Do Not Disturb" signs shall be installed at the locations shown on the approved CAMP plan. This requirement must be completed prior to minor subdivision approval.
6. A Critical Area Easement must be recorded in Baltimore County Land Records along with the appropriate declaration of protective covenant, conditions, and restrictions. Recordation must be completed prior to minor subdivision approval.

Mr. Devin Leary
Totaro, Frances P. Property
2021 Rocky Point Road 21221
Critical Area Administrative Variance
Tracking No. 07-17-2591
January 8, 2018
Page 4

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article § 8-1808(d)(6)(ii).

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

Sincerely,

David V. Lykens
Deputy Director

DVL: pad

c: Ms. M. Claudia Jones, Critical Area Commission

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

Property Owner Signature(s)	Date
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Property Owner Printed Name(s)